

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5960

PETITION OF GLENN THOMAS
(Hearing held February 11, 2004)

OPINION OF THE BOARD
(Effective date of Opinion, April 30, 2004)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(a). The petitioner proposes to construct a two-story addition that requires a variance of 2.30 feet as it is within 22.70 feet of the front lot line and a variance of 3.20 feet as it is within 3.80 feet of the side lot line. The required front lot line setback is twenty-five (25) feet and the required side lot line setback is seven (7) feet.

The subject property is Lot 1, Block 5, Montgomery Hills Forest Subdivision, located at 2401 Birch Drive, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 01449081).

Decision of the Board: Requested variances **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a 13.4 x 30.8 foot two-story addition in the eastern section of the property.
2. The petitioner testified that his property is a small, narrow, pie-shaped lot, which has side yards that narrow from back to front. The petitioner testified that his lot is the smallest of the adjacent lots and that the road at the front of the property curves inward at the lot's front yard boundary.
3. The petitioner testified that the addition could not be located in the rear yard because the property's largest buildable area is in the eastern section of the lot. The petitioner testified the proposed construction would provide a new master bedroom and bath for the residence.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the while the shape of the petitioner's lot is distinctive, it is not a peculiar characteristic limited to the petitioner's lot and that the adjoining lots, Lots 2, 3 and 4, share this distinctive characteristic. The Board further finds that the petitioner's lot shares its small size with adjoining Lot 2. See, Exhibit No. 7 [zoning vicinity map].

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions

The Board finds that the addition, as proposed, is not the minimum reasonably necessary.

The petition does not meet the requirements of Section 59-G-1.3(a) and (b). The Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variances of 2.30 feet from the required twenty-five (25) foot front lot line setback and of 3.20 feet from the required seven (7) foot side lot line setback for the construction of a two-story addition are denied.

The Board adopted the following Resolution:

Chairman Donald H. Spence, Jr. was necessarily absent and did not participate in this Resolution. On a motion by Angelo M. Caputo, seconded by Donna L. Barron, with Louise L. Mayer and Allison Ishihara Fultz, Presiding Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz
Presiding Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 30th day of April, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.